

### **REMARKS**

[0001] The following paragraphs are numbered for ease of future reference. Claims 1, 7-8 and 19-33 are all the claims presently pending in this application. Claims 1, 7 and 8 have been amended to more particularly define the claimed invention. Claims 19-33 have been added to claim additional features of the claimed invention.

[0002] Applicant further respectfully submits that no new matter is added to the currently amended claims. Applicant respectfully traverses the rejections based on the following discussion.

#### **I. OBJECTION TO THE SPECIFICATION**

[0003] The Specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. The Examiner alleges that, “the recited "computer storage medium" of Claim 7 and "computer readable storage media" of claim 8” fail to have proper support in the Specification. Applicant hereby provides that the Specification, for example, at lines 32-22 of page 15, states that a “storage device 555 can include a disk drive or any other suitable storage medium”, and on lines 10-12 on page 16, states, “The computer software may be recorded on a portable storage medium, in which case, the computer software program is accessed by the computer system 500 from the storage device 555.” In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw this rejection.

#### **II. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

[0004] Claims 1, 7 and 8 are rejected under 35 U.S.C. §112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner alleges that, "The claim language in the following claim is not clearly understood: i. As to claim 1, (line 18), claim 7 (line 20) and claim 8 (line 18), it is not clearly understood whether "set of logical processes" refers to "set of parameter" and how "set of logical processes" relates with "set of parameter".

[0005] Claims 1, 7 and 8 have been amended in a manner believed fully responsive to all points raised by the Examiner. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw this rejection.

### **III. THE PRIOR ART REJECTION**

#### **The 35 U.S.C. § 103(a) Rejection over Caswell further in view of Araki and Polan**

[0006] Claims 1, 7 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Caswell et al., U.S. Pat. No. 6,336,138, (hereinafter "Caswell"), further in view of Araki et al., U.S. Pat. No. 5,671,338 further in view of Polan et al., U.S. Pat. App. Pub. No. 2004/0068565, (hereinafter "Araki and Polan").

[0007] The Examiner alleges that one of ordinary skill in the art would have been motivated to modify Caswell with the teaching from Araki and Polan to form the invention of claims 1, 7 and 8. Applicant submits, however that these references would not have been combined and even if combined, the combination would not teach or suggest each element of the claimed invention.

[0008] Applicant traverses the Examiner's rejection since, among other reasons, Caswell is directed toward generating a service model instance when service model template is combined with discovery information specific to actual network elements and the actual network services

of a particular computing environment, (that is, the service model instance is the realization of the template for a particular set of elements, services and inter-dependencies in a specific computing environment). Araki is directed toward a constraint evaluation system which evaluates the validity of the allocation proposal with the constraints based on allocation proposal data representing an allocation proposal containing plural elements and condition data representing a constraint for the allocation proposal.

[0009] However, Applicant's claimed invention is directed toward requesting an alternative abstract plan based on said evaluated instantiated plan violating at least one of the predetermined constraints, and composing the alternative abstract plan based on receiving information in requesting the alternative abstract plan of a specific predetermined constraint that caused a violation.

[0010] More specifically, Applicant submits, that neither Caswell, nor Araki and Polan, nor any alleged combination thereof, teaches or suggests, "requesting, using said processor, an alternative abstract plan based on said evaluated instantiated plan violating at least one of the predetermined constraints," and "composing, using said processor, said alternative abstract plan based on receiving information in said requesting of said alternative abstract plan of a specific predetermined constraint that caused a violation," according to Applicant's independent claim 1, and similarly, independent claims 7 and 8.

[0011] Applicant respectfully submits that Caswell would not have been combined with Araki and Polan as alleged by the Examiner. Indeed, these references are non-analogous because they are non-combinable for the featured relied on by the Examiner.

[0012] Caswell is directed to a first phase in constructing a service model is the generation of a specification of a service model template that comprises a generic specification of the service

topology and measurement topology for the service of interest, and a second phase of the auto-discovery process uses software agents that are executed within the ISP system and that take an internal viewpoint of the ISP system. That is, the first phase of discovery identifies most of the execution, component and organization dependencies, as well as some of the inter-service dependencies, the internal discovery of the second phase is focused on determining the inter-service dependencies. Araki is directed to Constraint evaluation system, expert system, and constraint evaluation method for evaluating an allocation proposal, in which the job combinations are selected for individual evaluation to test if each combination is consistent with a constraint, and with problems completely different from those to which the present invention and/or Caswell are directed.

[0013] Caswell has no anticipation of or a need for a “constraint evaluation system, expert system, and constraint evaluation method for evaluating an allocation proposal, in which the job combinations are selected for individual evaluation to test if each combination is consistent with a constraint,” as disclosed by Araki. Thus, no person of ordinary skill in the art would have considered combining these disparate references, absent impermissible hindsight.

[0014] In fact, Applicant submits that the Examiner can point to no proper motivation or suggestion in the references or of one of ordinary skill in the art to urge the combination as alleged by the Examiner. The Examiner alleges on page 6 of the Non-Final Office Action that the motivation to combine the Casewell and Araki reference was, “because this would improves [sic] the speed and quality of implementing the required changes in the network configuration to support evolving business and corporate functions.” However, nowhere in Caswell is there any anticipation of this motivation to combine the disclosure of these two references. Therefore, Applicant respectfully submits that one of ordinary skill in the art would not have been so

motivated to combine the references as alleged by the Examiner.

[0015] The Examiner admits that Caswell fails to teach or suggest, “composing, using said processor, an alternative abstract plan based on said evaluated instantiated plan violating at least one of the predetermined constraints,” and alleges that Araki discloses, “replacing a first element of the ... and recreating the allocation proposal, col. 12, lines 52-56”. However, Applicant submits that neither Caswell nor Araki teach or suggest Applicant’s claimed, “requesting, using said processor, an alternative abstract plan based on said evaluated instantiated plan violating at least one of the predetermined constraints,” and “composing, using said processor, said alternative abstract plan based on receiving information in said requesting of said alternative abstract plan of a specific predetermined constraint that caused a violation,” according to Applicant’s independent claim 1, and similarly, independent claims 7 and 8. Caswell fails to teach or suggest any type of “*requesting an alternative plan*” based on “*violating predetermined constraints,*” and neither reference teaches or suggests “*composing an alternative abstract plan based on information of a specific predetermined constraint that caused a violation.*”

[0016] The Examiner admits that the combination of Caswell and Araki fails to teach or suggest, “the abstract plan is represented in a predetermined form using a web services composition language,” and alleges that “Charisius [Polan] teaches wherein the abstract plan is represented in a predetermined form using a web services composition language (paragraph 6).”

[0017] However, even assuming *arguendo* that the Examiner's position has some merit, Polan fails to teach or suggest, “requesting, using said processor, an alternative abstract plan based on said evaluated instantiated plan violating at least one of the predetermined constraints,” and “composing, using said processor, said alternative abstract plan based on receiving information in said requesting of said alternative abstract plan of a specific predetermined constraint that

caused a violation,” according to Applicant’s independent claim 1, and similarly, independent claims 7 and 8. Therefore, Araki and Polan fails to overcome the deficiencies of Caswell.

[0018] In summary, Caswell is directed toward generating a service model instance when service model template is combined with discovery information specific to actual network elements and the actual network services of a particular computing environment, (that is, the service model instance is the realization of the template for a particular set of elements, services and inter-dependencies in a specific computing environment). Araki is directed toward a constraint evaluation system which evaluates the validity of the allocation proposal with the constraints based on allocation proposal data representing an allocation proposal containing plural elements and condition data representing a constraint for the allocation proposal.

[0019] However, Applicant’s claimed invention is directed toward requesting an alternative abstract plan based on said evaluated instantiated plan violating at least one of the predetermined constraints, and composing the alternative abstract plan based on receiving information in requesting the alternative abstract plan of a specific predetermined constraint that caused a violation.

[0020] Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw this rejection since the alleged prior art references to Caswell and Araki and Polan (either alone or in combination) fail to teach or suggest each element and feature of Applicant’s claimed invention.

#### **IV. FORMAL MATTERS AND CONCLUSION**

[0021] In view of the foregoing, Applicant submits that claims 1, 7-8 and 19-33, all of the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to

Application No. 10/727,672  
Docket No. JP920030196US1

15

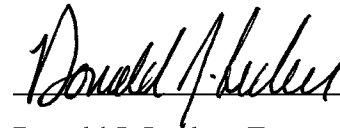
issue at the earliest possible time.

[0022] Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic interview.

[0023] The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 09-0441.

Date: August 11, 2009

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Donald J. Lecher", written over a horizontal line.

Donald J. Lecher, Esq.  
Registration No. 41,933

**GIBB IP LAW FIRM, LLC**  
2568-A Riva Road, Suite 304  
Annapolis, Maryland 21401  
Voice: 410-573-6501  
Fax: 301-261-8825  
E-mail: Lecher@gibbiplaw.com  
**Customer No. 29154**